IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO. 20 OF 2007**

M/s. Kulkarni Constructions Pvt.Ltd. .. Applicants

Vs.

The State of Maharashtra & ors. ..Respondents

Mr. Shriram s. Kulkarni for applicants.

Ms. S.V.Gajare, APP, for the State.

**CORAM: J.H.BHATIA,J.**

**DATE : 15th June, 2007.**

**P.C.**

1. Heard Mr. Kulkarni, Counsel for the applicants and Mr. Jha, Counsel for Respondent Nos. 2 and 3.

2. On a complaint filed by the applicants, respondentsd Nos. 2 and 3 were convicted under sectioon 138 of the Negotiable Instruments Act and the learned trial Court directed the respondents Nos. 2 and 3 to deposit an amount of Rs. 34 lakhs which included the cheque amount of Rs.25 lakhs and compensation of Rs.9 lakhs. That order came to be challenged by the

respondents Nos. 1 and 2 in the Sessions Court and the Sessions Court directed respondents Nos. 2 and 3 to deposit Rs.10,20,000/- pending appeal. That order was also challenged by the respondents in Writ Petition No. 1441 of 2006. When that Writ Petition came up on 19.10.2006, on behalf of the present respoondents Nos. 2 and 3/writ petitioners, a statement was made that the an amount of Rs.5 lakhs was already deposited and for payment of balance amount, time may be extended and accordingly, time was extended by 8 weeks. It appears that respondents Nos. 2 and 3 also submitted a cheque of Rs.5,20,000/-. However, that cheque was dishonoured.

3. By this Application, the applicants/original complainants seek liberty to withdraw the amount of Rs.5 lakhs deposited by respondents Nos. 2 and 3 in Writ Petitiion No. 1441 of 2006.

4. Mr. Jha, learned Counsel, contended that there are number of criminal and civil matters between the partners and if the matter is adjourned for about two weeks, the parties may sit down to settle the case amicably. He also offered that respondents Nos. 2 and 3/writ petitioners may be willing to pay the whole of the principal amount in instalments provided the complainants/applicants waive interest part. These offers are still open and they can be considered as and

when parties sit down to settle all the matters. However, the record reveals that respondents Nos. 2 and 3 had filed Pursis before the trial Court showing their willingness to deposit Rs.39 lakhs. Before this Court also they showed willingness to deposit Rs.10.20 lakhs subject to grant of some time.

5. In view of the circumstances noted above and the fact that huge amount is due to the applicants from respondents Nos. 2 and 3, I see no justification to refuse withdrawal of Rs.5 lakhs by the applicants.

6. The applicants/respondents in Writ Petition No.1441 of 2006 are allowed to withdraw the amount of Rs.5 lakhs which is lying deposited in this Court.

7. The offer made by Mr. Jha, learned Counsel during the arguments of this Application shall not be construed as an admission of liability.

Application stands disposed of.

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**(J.H.BHATIA,J.)**